

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE BOARD OF COSMETOLOGIST EXAMINERS

In the Matter of Karen Ferrari, doing
business as Karen's Clippers

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for a Prehearing Conference before Administrative Law Judge Richard C. Luis on November 24, 2010 at the Office of Administrative Hearings in St. Paul. Michael J. Tostengard, Assistant Attorney General, appeared on behalf of the Minnesota Board of Cosmetologist Examiners (Board). There was no appearance by or on behalf of Karen Ferrari, doing business as Karen's Clippers (Respondent). The Respondent did not request a continuance or contact the Administrative Law Judge for other relief. The Board requested a default recommendation.

STATEMENT OF THE ISSUES

1. Did the Respondent violate Minn. Stat. § 155A.27 by performing unlicensed cosmetology activities?
2. Did the Respondent violate Minn. Stat. § 155A.33, subd. 4(1) by violating a Cease and Desist Order issued by the Board?

Based on the file and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On October 7, 2010, the Board served the Notice of and Order for Hearing, Notice of Prehearing Conference and Statement of Charges in this matter by First Class Mail to the Respondent's last known address.
2. At page three, paragraph one of the Notice, the following language appears:

Respondent's failure to appear at the prehearing conference or hearing may result in a finding that Respondent is in default, that the Board's allegations contained in the Statement of Charges may be accepted as true, and that its proposed disciplinary action may be upheld.

The Notice indicates also that if any party has good cause to request a delay of the proceedings, the request must be made to the Administrative Law Judge five days prior to the proceeding, and the request must be served on the other party.

3. The allegations in this matter specify that the Respondent is not licensed by the Board in any capacity, that the Board's investigation of the Respondent revealed the Respondent was performing haircutting services, which under Minnesota law constitutes cosmetologist activity, that the Board served a Cease and Desist Order on the Respondent, forbidding unlicensed cosmetologist activities, and that the Board's continued investigation revealed that the Respondent was continuing to perform unlicensed cosmetology activity even after the issuance of the Cease and Desist Order.

4. Because the Respondent failed to appear at the Prehearing Conference or contact the Administrative Law Judge prior to the Prehearing Conference, she is in default.

5. Pursuant to Minn. Rule 1400.6000, upon the Respondent's Default, the allegations contained in the Notice and Order for Prehearing Conference may be taken as true.

6. The allegations in the Notice of and Order for Hearing, Order for Prehearing Conference and Statement of Charges are taken as true and incorporated by reference into these Findings of Fact.

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Board of Cosmetologist Examiners have jurisdiction in this matter under Minn. Stat. §§ 14.50 and 155A.33.

2. The Respondent received proper, timely notice of the allegations against her and of the time and place of the Prehearing Conference. This matter is properly before the Administrative Law Judge.

3. The Board has complied with all procedural requirements.

4. Under Minn. Rule 1400.6000, a contested case may be decided adversely against a party who defaults. On default, the allegations of and the issues set out in the Notice of and Order for Hearing or other pleading may be taken as true or deemed proved without further evidence.

5. The allegations of and issues set out in the Notice of and Order for Hearing, Notice of Prehearing Conference and Statement of Charges are taken as true and deemed proved as a result of the Respondent's default.

6. The Respondent is in violation of Minn. Stat. §§ 155A.27 and 155A.33, subd. 4(1).

7. Disciplinary action against the Respondent is in the public interest, within the meaning of Minn. Stat. § 45.027.

Based on the Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the Board of Cosmetologist Examiners take appropriate disciplinary action against Respondent Karen Ferrari, doing business as Karen's Clippers.

Dated: December 21, 2010

/s/ Richard C. Luis

RICHARD C. LUIS
Administrative Law Judge

Reported: Default

NOTICE

This report is a recommendation, not a final decision. The Minnesota Board of Cosmetologist Examiners will make the final decision after a review of the record. The Board may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact Gina Stauss Fast, Executive Director, 2829 University Avenue S.E., Suite 701, Minneapolis, MN 55414 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 calendar days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.